[FR] French competition authority fines Google EUR 250m for breaching obligations concerning neighbouring rights of press publishers and agencies

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Amélie Blocman
Légipresse

On 15 March, the *Autorité de la concurrence* (French competition authority) issued a fine of EUR 250 million against the companies Alphabet Inc, Google LLC, Google Ireland Ltd and Google France for failing to meet their obligations under the decision of 22 June 2022 concerning the application of the Law of 24 July 2019 creating a neighbouring right for press publishers and agencies. This was the fourth decision taken by the competition regulator since the case was referred to it following a complaint lodged in November 2019 by the *Syndicat des éditeurs de presse magazine* (Magazine Press Publishers' Union – SEPM), the *Alliance de Presse d'Information Générale* (General Press Alliance – APIG) and the AFP news agency.

Firstly, the competition authority ruled that Google had not met its obligation to negotiate remuneration for the use of protected press content by its services in accordance with transparent, objective and non-discriminatory criteria within three months. It also considered that Google had reduced the assessment basis for such remuneration, thereby breaching the principles enshrined in the aforementioned 2022 decision, by undervaluing the indirect revenue that it generated as a result of the extra appeal created by the posting of protected press content. Google had also refused to pay to display the titles of press articles, which went against the competition authority's previous decisions and the ruling of the Paris Appeal Court of 8 October 2020. The competition authority also noted that, in most of the contracts it had signed with publishers since its obligations had come into force, Google had not or only partially met its obligation to review the level of remuneration and correct it if appropriate.

With regard to the "Bard" artificial intelligence service launched by Google in July 2023 (which later became "Gemini"), the competition authority noted in particular that, in order to train its original model, Google had used the content of press publishers and agencies without informing them or the competition authority itself. It had therefore infringed its first obligation, which required it to negotiate in good faith, on the basis of transparent, objective and non-discriminatory criteria, the remuneration of publishers for any use of protected content in its products and services, in the form of neighbouring rights. However, the question of whether the use of press publications by an AI service is protected under

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neighbouring rights was not decided at this stage. Google subsequently linked the use of the content by its AI service to the posting of protected content, failing to offer a technical solution through which press publishers and agencies could oppose the use of their content by “Bard” (“opt out”) without affecting the posting of protected content under neighbouring rights on other Google services, thereby preventing press publishers and agencies from negotiating remuneration. The competition authority said it would pay close attention in future to the effectiveness of the opt-out mechanisms put in place by Google.

In response to the violations identified, Google presented a series of corrective measures, which were noted by the competition authority.

Autorité de la concurrence, décision n° 24-D-03 du 15 mars 2024

https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2024-03/24d03vf.pdf

French competition authority, decision no. 24-D-03 of 15 March 2024

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